MALAYAN UNION REPORTS.

SAW TUAN CHEONG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Spenser-Wilkinson, J.) September 5, 1946]

Criminal Procedure Code, Section 156 — Duplicity of charges — Foodstuffs Movement Restriction Order 1945 — When sentence may be altered on appeal.

The appellant was charged as follows:—"That you, Saw Tuan Cheong, at about 11.45 p.m. on 28.6.46 at Sepang Town did move in a motor vehicle bearing Registration No. B. 421, a controlled article in excess of 12 katties, to wit, rice 13 bags, weighing 2251 katties nett without the written authorization of the Assistant Food Controller, Selangor, contrary to Order No. 2 of the Foodstuffs Movement Restriction Order, 1945. and thereby you have committed an offence punishable under Section 17 of the Food Control Proclamation No. 10 of 1945". Paragraph 2 of the Foodstuffs Restriction Order reads as follows:—"No controlled article in quantities in excess of 12 katties except edible oil may be moved to and from, or within, any of the areas specified in the Schedule hereto, save with the written authorization of the Assistant Food Controllers appointed for the areas concerned". The appellant was convicted and on appeal it was contended on his behalf that paragraph 2 of the Order contemplated two distinct offences: first, moving to and from the areas specified; and secondly moving within any of the areas specified; and that the charge as drawn was defective in that it did not specificaly charge either of these offences, or alternatively did not make it clear to the accused with which of the two offences he was charged. There was also an appeal as to the sentences of imprisonment imposed.

Held, (1) that to establish duplicity in a charge, it was not enough to show that the section or paragraph under which the accused was charged contemplated two offences but that it was necessary to go further and show that both offences had been included in the same charge, thus embarrassing the accused in his defence and making it impossible for him to plead autrefois convict in respect of either of the alternatives;

(2) that in this case, the accused was in fact charged with only one offence and any omissions in the charge was covered by Section 156 of the Criminal Procedure Code;

(3) that there was nothing to show that the sentences imposed in the cases under appeal were illegal or manifestly unsuitable, and that the Court was therefore not prepared to interfere with the discretion of the Court below and revise the sentence.

Cases referred to :—

(1) *Jagar Singh v. Public Prosecutor* (1936) F.M.S.L.R. 84, (1936) 5 M.L.J. 114.

(2) *Yap Liow Swee v. Public Prosecutor* (1937) F.M.S.L.R. 71; (1937) 6 M.L.J. 225.

(3) *Liow Chow v. Public Prosecutor* (1939) F.M.S.L.R. 35; (1939) 8 M.L.J. 170.

E. D. Shearn for the appellant.

Grattan-Bellew D. P. P. for the respondent.

Spenser Wilkinson, J. :—The only point of difficulty which arises in this appeal is in regard to the charge in Selangor Criminal Case No. 61 of 1946. The Appellant was charged as follows :—

> That you, Saw Tuan Cheong, at about 11.45 p.m. on 28.6.46 at Sepang Town did move in a motor vehicle bearing Registration No. B. 421, a controlled article in excess of 12 katties, to wit, rice 13 bags, weighing 2251 katties nett without the written authorisation of the Assistant Food Controller, Selangor, contrary to Order No. 2 of the Foodstuffs Movement Restriction Order 1945, and thereby you have committed an offence punishable under Section 17 of the Food Control Proclamation No. 10 of 1945.

The reference to "Order No. 2" should of course be a reference to paragraph 2 of the Movement Restriction Order. That paragraph reads as follows :—

> 2. No controlled article in quantities in excess of 12 katties except edible oil may be moved to and from, or within, any of the areas specified in the Schedule hereto. save with the written authorisation of the Assistant Food Controllers appointed for the areas concerned.

It is contended on behalf of the Appellant that this paragraph of the Order contemplates two distinct offences, first, moving to and from any of the areas specified. and secondly, moving within any of the areas specified: and that the charge as drawn is defective in that it does not specifically charge either of these offences, or alternatively does not make it clear to the accused with which of the two offences he is charged.

For the Respondent, it was argued that there are not two distinct offences; that the gist of the offence is "moving", because the areas specified together comprise the whole of the Malayan Union and Singapore, so that, in effect, all movement is prohibited; and that in any event it is quite clear, from the charge as framed, which of the two offences accused was charged with, namely, moving within an area.

If all movement of controlled articles was intended to be prohibited without any distinction, it would not have been difficult to word the paragraph accordingly; and some effect must be given; I think, to the use of the words "to and from, or within." Whilst it is true that it is impossible to move to or from an area without at the same time moving within an area, the converse is not true. And one can easily imagine circumstances in which it might be a more serious offence to move controlled articles out of or into a particular area, whilst it might not be so serious to move the same articles about within one of those areas. The reverse situation is also conceivable if there were special circumstances affecting a particular area. I am

inclined to think, therefore, that the paragraph in question contemplates two offences.

If I am right in this conclusion, the next question is whether the accused was in this case charged with one or other of these offences, and, if so, which. I find it difficult to see how the words "at 11.45 p.m. on 28.6.46 at Sepang Town did move" can be construed as an accusation of moving rice from one area to another. There is no suggestion anywhere in the charge that the rice had ever been in any other area, or was being taken, or was intended to be taken, into any other area. No areas, except the State of Selangor and Sepang, which is within that State, are mentioned, and indeed I think the insertion of the words "at Sepang town" in the charge make it necessary for the prosecution to prove that the movement took place in Sepang.

I think it is clear, therefore, that accused was not charged with moving an article to and from any area. Does the charge in this case charge him with moving an article within an area? In my opinion it does. He was charged with moving "at Sepang town" and I cannot see that the addition of such words as "within the State of Selangor" or "within one of the areas specified in the Schedule to the Order" would give the accused substantially better notice of the matters with which he was charged. No doubt the addition of some such phrase would have made the charge clearer and it might be said, therefore, that there was an omission in the charge to state some of the particulars required to be stated. But an omission of this kind is, in my view, dealt with by Section 156 of the Criminal Procedure Code: for I do not think, in view of the defence raised at the trial, that the accused was in fact misled.

Two authorities were quoted to me, in which charges have been held to be bad for duplicity. In *Jagar Singh vs. Public Prosecutor*[1] the accused was charged with driving a car "carelessly without reasonable regard to the safety, comfort or convenience of other persons using the road" and in *Yap Liow Swee v. Public Prosecutor*[2] the accused was charged with driving "carelessly or negligently in a manner which was dangerous to the public." In both these cases, the charges were held up to be bad because they charged the accused alternatively in one single charge with distinct offences, with the result that he could not know with which of the offences he had been charged, or of which of them he had been convicted. I do not think the case now before me comes within the principle there laid down. To establish duplicity in a charge, it is not enough to show that the section or paragraph under which accused is charged contemplates two offences; it is necessary to go further and show that both offences have been included in the same charge, thus embarrassing the accused in his defence and making it impossible for him to plead *autrefois convict* in respect of either of the alternatives. In this case, I am of the opinion that the accused was in fact charged with only one offence. This ground of appeal therefore fails.

A further point was raised in regard to Criminal Case No. 64 of 1946 which was tried together with Criminal Case No. 61 of 1946. The Appellant asks for a new trial on the ground that he did not have sufficient time to prepare his defence or to engage counsel. It is true that the interval between the accused's arrest on the second charge and the trial was very short; but it is to be observed that accused had been arrested on the first charge some 12 days previously and, although released on bail, had taken no steps to engage counsel during that period. Moreover, as was pointed out on behalf of the Respondent, no indication was given in this Court as to the nature of the defence which accused might have raised had he been given more time. It is also to be observed that no application was made by the accused at the trial for an adjournment, and, although at the conclusion of the case accused stated "my witnesses have not come", there is nothing to indicate that he had made any application to sub-poena any witnesses. In the circumstances, I do not consider that sufficient grounds have been disclosed to justify me in ordering a re-trial.

Finally, a question was raised as to the sentences, and it was suggested on behalf of the Appellant that a fine would have been an adequate punishment in respect of the first charge. I would not be prepared to interfere with the discretion of a Court below and revise a sentence unless there appeared to be some obvious error, and, indeed, I am precluded from doing so by the decision of the Court of Appeal in *Liow Chow v. Public Prosecutor*[3] where it is laid down that before a sentence is altered it must be manifestly wrong either in the sense of being illegal or of being unsuitable to the proved facts and circumstances.

There is no illegality in the sentences imposed in these cases, and I do not think they were manifestly unsuitable. The appeal will therefore be dismissed.

Appeal dismissed.